

# Court of Appeals, State of Michigan

## ORDER

People of MI v James Mass

Docket No. 283678

LC No. 07-021516-01

Helene N. White  
Presiding Judge

Michael J. Talbot

Karen M. Fort Hood  
Judges

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In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the October 23, 2007, order of the 36<sup>th</sup> District Court that dismissed the charge of carrying a concealed weapon, MCL 750.227(2) based on insufficient evidence at defendant's preliminary examination, and the January 25, 2008, order of the Wayne Circuit Court that affirmed this order are REVERSED. The visibility of a portion of a weapon protruding from defendant's pocket presented a question of fact whether there was concealment within the meaning of the statute. *People v Hernandez-Garcia*, 266 Mich App 416, 421; 701 NW2d 191 (2005), affirmed in part, vacated in part on other grounds 477 Mich 1039 (2007); *People v Johnnie W Jones*, 12 Mich App 293, 296-297; 162 NW2d 847 (1968); *People v Charron*, 54 Mich App 26, 30; 220 NW2d 216 (1974). The dwelling house exception to MCL 750.227(2) does not extend to the area between the sidewalk and the roadway. *People v Marrow*, 210 Mich App 455, 460-464; 534 NW2d 153 (1995), affirmed 453 Mich 903 (1996), overruled in part on other grounds, *People v Pasha* 466 Mich 378; 645 NW2d 275 (2002). One may reasonably infer from the testimony of the two officers that defendant was carrying the gun as he walked in this area. Where the district court acknowledged that the evidence presented at the preliminary examination supported a charge of carrying a weapon in a vehicle, the court should have allowed the prosecution to add the charge. *People v McGee*, 258 Mich App 683, 691; 672 NW2d 191 (2003). Therefore, the matter is REMANDED to the district court for further proceedings not inconsistent with this order. We do not retain jurisdiction.

Because the magistrate apparently rejected certain testimony as lacking credibility, Judge White would deny the application for leave to appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 07 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk